

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Robert G. Taub

Kirksey Post Office  
Kirksey, Kentucky

Docket No. A2012-126

ORDER DISMISSING APPEAL

(Issued May 11, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”<sup>1</sup> The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

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<sup>1</sup> United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On April 5, 2012, the Commission received a petition for review of the Postal Service’s decision to suspend the Kirksey post office in Kirksey, Kentucky.<sup>2</sup> The Petition for Review was filed by Barbara Bucy (Petitioner) and is postmarked March 28, 2012. Attached to the Petition is a notice indicating that “[s]ervices at the Kirksey post office will be emergency suspended at the close of business on Thursday April 5, 2012.” Stating that “[p]roper procedures are in place for the legal closure of Postal facilities,” (Petition at 3), Petitioner appears to contend that the suspension is equivalent to a closure of the facility and that the Postal Service failed to follow procedures prescribed by 39 U.S.C. § 404(d).

On April 17, 2012, the Postal Service filed a motion to dismiss this proceeding for lack of jurisdiction.<sup>3</sup> On April 25, 2012, Petitioner filed an answer in opposition to the Motion.<sup>4</sup> The Postal Service motion is granted.

## II. PARTICIPANT PLEADINGS

*Postal Service Motion.* The Postal Service moves to dismiss this proceeding for lack of Commission jurisdiction. It states that it has not made a determination to close the Kirksey post office and asserts that such a determination is a prerequisite for an appeal under 39 U.S.C. § 404(d). Motion at 3-4. The Postal Service states that the postmaster relief (PMR) in charge of the Kirksey office was reassigned and that it “has been unable to find a qualified postal employee to staff the office.” *Id.* at 2. The Postal

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<sup>2</sup> Petition for Review received from Barbara Bucy regarding the Kirksey, Kentucky post office 42054, April 5, 2012 (Petition).

<sup>3</sup> Motion of United States Postal Service to Dismiss Proceedings, April 17, 2012 (Motion).

<sup>4</sup> Answer of Petitioner to USPS Motion to Dismiss, April 25, 2012 (Answer).

Service states “that operations at the Kirksey Post Office are suspended, and the office has not undergone a formal discontinuance study. Therefore, no administrative record exists that can be filed for this appeal.” *Id.* at 1. The Postal Service states that in suspending the Kirksey post office, it has followed the procedures set out in section 61 of Handbook PO-101. *Id.* at 3.<sup>5</sup> Under those procedures, “[t]he Postal Service has 90 days from the date of suspension to decide whether to take necessary corrective action, or initiate a feasibility [*i.e.*, closing] study.” Motion at 3.

*Petitioner’s answer.* Petitioner disputes the Postal Service’s statement that it looked for a qualified postal employee to replace the reassigned PMR at Kirksey. She states that she knows of PMRs in the area who were never approached about working at Kirksey. She states that equipment has been removed from the post office, which is an indication that the office is permanently closed. Answer at 1.

### III. COMMISSION ANALYSIS

The Commission’s authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service’s determination to close or consolidate a post office on the basis of the record that was before the Postal Service.

The Postal Service’s Motion clarifies the status of the Kirksey post office.<sup>6</sup> Among other things, the Postal Service states, “[w]hile there is the possibility that the Postal Service may decide to study the Kirksey Post Office for discontinuance, it has yet to do so.” Motion at 4-5. Further, it represents that the Kirksey “office has not undergone a formal discontinuance study[;]” (*id.* at 1), and that “a district decision to

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<sup>5</sup> See USPS Handbook PO-101, Postal Service-Operated Retail Facilities Discontinuance Guide, July 14, 2011, § 61 (Handbook PO-101).

<sup>6</sup> In a previous docket, the Postal Service had indicated that the Kirksey post office was among the retail facilities being reviewed for possible discontinuance. See Docket No. N2011-1, Library Reference USPS-LR-N2011-1/3, “List of Retail Facilities Undergoing Discontinuance Review Outside the Scope of the RAO Initiative,” Excel file USPS.LR.3.xls, Row 107, July 27, 2011.

study the office for discontinuance or restore operations will be made within 90 days.”  
*Id.* at 2 (footnote omitted).

Petitioner does not dispute these statements, although she does challenge the Postal Service’s diligence in searching for a PMR. Answer at 1.

In this case, the Postal Service has not conducted a formal discontinuance study of the Kirksey post office. Motion at 1. Nor has it issued a Final Determination to discontinue that office. *Id.* at 4. Rather, it has suspended operations and, in the interim, provided postal services to the Kirksey community through a Village Post Office. Under the circumstances, the Commission cannot conclude that Postal Service’s actions constitute a closure subject to section 404(d). Therefore, the motion is granted.

The Postal Service indicates that, pursuant to Handbook PO-101, it will decide within 90 days of the suspension (which occurred April 5, 2012) whether to study the Kirksey post office for discontinuance or to restore operations. *Id.* at 2, 3; *see also* Handbook PO-101, §§ 617-619. The Postal Service shall notify the Commission of its decision regarding the Kirksey post office by July 12, 2012, 7 days after the end of the 90-day period.<sup>7</sup>

*It is ordered:*

1. The Motion of the United States Postal Service to Dismiss Proceedings, filed April 17, 2012, is granted.
2. The Postal Service shall notify the Commission of its decision regarding the Kirksey post office no later than July 12, 2012.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

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<sup>7</sup> Since the 90<sup>th</sup> day falls on a Federal holiday, July 4, 2012, notification to the Commission would be due no later than July 12, 2012.

## CONCURRING OPINION OF CHAIRMAN GOLDWAY

Although I join with my fellow Commissioners in the decision to dismiss this appeal, I note that the Postal Service's filings and public statements with regard to the Kirksey, Kentucky post office appear inconsistent.

The Postal Service's Motion to Dismiss (Motion) says "the office has not undergone a formal discontinuance study." Motion at 1. The Motion further says "while there is the possibility that the Postal Service may decide to study the Kirksey post office for discontinuance, it has yet to do so." *Id.* at 5.

However, in late June 2011, Postal Service officials sent letters to customers announcing the possible closing of the Kirksey post office, and scheduling of a public meeting on June 30, 2011 at a local church, according to an article in the local newspaper.<sup>1</sup>

On June 30, 2011, the Postal Service held the community meeting, which was attended by almost 100 residents, according to a follow-up article.<sup>2</sup> The article quoted the Postal Service representative directing the meeting as saying "The decision has not been made. There is a vacancy in the post office and we're doing a study...." *Id.*

The Postal Service spokesman also said that Kirksey is on the list of small, rural post offices currently being studied for possible closure. *Id.* As the Order notes, Kirksey was included on that list of retail facilities undergoing discontinuance review outside the scope of the Retail Access Optimization Initiative (RAOI). See n.6, *supra*.

The Postal Service should provide the residents of Kirksey with information on the status of the Kirksey post office within the guidelines set forth in the Handbook

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<sup>1</sup> See "Kirksey Post Office Closing Eyed," by Tom Berry, June 25, 2011, *Murray Ledger and Times*.

<sup>2</sup> See "Kirksey Post Office Concerns Expressed: Public Hearing Held to Discuss Possible Closure of the Facility," by Tom Berry, July 1, 2011, *Murray Ledger and Times*.

PO-101.<sup>3</sup> While this matter may not be ripe for a post office closing appeal, the people of that community should promptly be provided with information on the levels of postal service they are to receive.

The Postal Service should consider what actions can be taken to provide the citizens of Kirksey, Kentucky with a level of continuity of service consistent with the stated expectations of 39 U.S.C. 101(b) and 404(d).

The Postal Service has the management authority to impose suspensions under the guidelines it established in the Handbook PO-101. However, as the Commission stated unanimously in its decision regarding the Cranberry, Pennsylvania post office appeal, sections 101(b) and 404(d) of title 39, give the Postal Service a concomitant responsibility to carry out the “national policy that citizens should have the opportunity to convey their concerns to the Postal Service before their local post office is closed and, most important, that the Postal Service will fairly consider those concerns prior to making a decision to close that facility.”<sup>4</sup>

The Postal Service also has an obligation to provide accurate and complete information to the Commission when responding to a Commission inquiry on the status of a post office. The apparent contradictions in the record here are troubling in that regard.

Ruth Y. Goldway

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<sup>3</sup> Section 711 of Handbook PO-101 lists 9 measures that must be taken by the Postal Service when suspending a post office. Section 711 states “The following must be done/accomplished: (a) Provide sufficient valid reason to suspend; (b) Provide sufficient documentation justifying suspension; (c) For Post Offices, involve Postmaster and labor organization(s) as appropriate; (d) Notify and adequately explain reason for suspension to customers; (e) Identify most likely recommended permanent service as temporary alternate service; (f) Conduct timely investigations and follow-up (A plan of action should be sent to the Headquarters Post Office review coordinator through the Vice President, Delivery and Post Office Operations, within 90 days after the suspension occurs.); (g) Conduct and documents a search for suitable alternate quarters, if applicable; (h) Conduct and document a search for qualified personnel, if applicable.

<sup>4</sup> Docket No. A2010-1, Order No. 402, Order on Appeal of Cranberry, Pennsylvania Post Office Closing, February 1, 2010, at 4.